

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of
Request for Waiver of
47 C.F.R. 15.117 by Kohler Co.

ET Docket 07-61

In the Matter of
Request for Waiver of
47 C.F.R. 15.117 by Electric Mirror LLC

ET Docket 07-62

**OPPOSITION OF
PHILIPS ELECTRONICS NORTH AMERICA CORPORATION**

Philips Electronics North America Corporation (Philips) respectfully submits this Opposition in response to the Commission's Office of Engineering and Technology's ("OET") Public Notice in the above-captioned proceedings.¹ Kohler Co. ("Kohler") and Electric Mirror, LLC ("Electric Mirror") each have filed a petition pursuant to Section 1.3 of the Commission's Rules requesting that the Commission waive the requirement that all broadcast television receivers imported into the United States or shipped in interstate commerce after March 1, 2007 include the capability to receive digital television signals (DTV tuner requirement).² Each petitioner has failed to meet the significant burden of proof needed to justify granting a waiver. In the circumstance presented here, involving the imperative of moving forward seamlessly and

¹ Office of Engineering and Technology, *Public Notice*, DA-07-1560, released March 30, 2007 ("Kohler"); Office of Engineering and Technology, *Public Notice*, DA-07-1561, released March 30, 2007 ("Electric Mirror").

² C.F.R. 15.117

expeditiously toward completion of the DTV transition, the justification for granting a waiver would have to be especially compelling. That is not the case here. Accordingly, Philips urges the OET to deny both of these requests.

I. STATEMENT OF INTEREST

Philips is a leading manufacturer of digital television receivers and other consumer electronic products, designed to bring consumers the benefits of the digital revolution. Philips was a founding member of the Grand Alliance that pioneered the ATSC over-the-air DTV broadcast standard and continues to be a leader in bringing High and Standard Definition digital television to American consumers. Philips has a strong record of achievement in technological innovation and successful promotion of consumer products using digital technologies. Philips educates retailers and consumers throughout the United States about the DTV transition. Philips has invested very substantial funds and decades of effort to develop leading-edge digital television receivers with integrated ATSC digital tuners.

II. NEITHER KOHLER NOR ELECTRIC MIRROR MEET THE STRICT STANDARD FOR GRANTING A WAIVER

Petitioners must overcome a high hurdle to prove that a waiver would be in the public interest.³ This hurdle is even higher when the petitions are filed so close to the deadline for

³ *WAIT Radio v. Federal Communications Commission*, 418 F.2d 1153 (D.C. Cir. 1969). *See also, Tucson Radio, Inc. v. Federal Communications Commission*, 452 F.2d 1380, 1382 (D.C. Cir. 1971); *Northeast Cellular Telephone Co. V. Federal Communications Commission*, 897 F.2d 1164 (D.C. Cir. 1990).

compliance as is the case here with one application filed just one day before the rule took effect⁴ and the other about a month before.⁵

Generally, OET may waive its rules for good cause shown and may choose to exercise its waiver power when the particular facts make strict compliance inconsistent with the public interest.⁶ In making this determination, OET will examine the petitioner's request to determine if a waiver is justified for considerations of hardship, equity, or a more effective implementation of policy.⁷

Neither Kohler nor Electric Mirror has stated any pertinent facts which would satisfy any of these requirements. Accordingly, OET should deny both applications. Both companies blame their chip suppliers for their inability to comply with the DTV tuner mandate.⁸ OET should not be persuaded. Both companies have been aware of the DTV tuner requirement for all television receivers since November 8, 2005.⁹ Thus, both companies had more than 15 months to make the necessary arrangements with suppliers. Moreover, as discussed in greater detail below, the establishment of the March 1, 2007 deadline was the culmination of a regulatory initiative that commenced in August 2002 that embodied a phase-in of the DTV tuner mandate, precisely to

⁴ Electric Mirror petition for Temporary Waiver of Section 15.117 of the Commission's Rules, filed February 28, 2007 at p. 4 ("Electric Mirror Petition").

⁵ Kohler Co. request for Temporary Waiver of section 15.177 [*sic*], filed January 26, 2007 ("Kohler Petition").

⁶ *North East Cellular v. FCC* at 1166.

⁷ *WAIT Radio v. FCC*, 418 F.2d at 1157, citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968).

⁸ Electric Mirror Petition at 4; Kohler Petition.

⁹ Requirements for Digital Television Receiving Capability, *Second Report and Order*, ET Docket 05-24, 20 FCC Rcd 18067 (2005).

assure an adequate supply of chips and other components.¹⁰ With so much lead time, it rings hollow for petitioners to claim that alleged chip shortages justify a waiver. The fact that both petitioners waited until the eve of the March 1, 2007 deadline before seeking administrative relief suggests that it is petitioners rather than the DTV transition that should suffer any adverse consequences of questionable planning.

III. THE COMMISSION'S EFFORTS TO TRANSITION FROM ANALOG TO DIGITAL TERRESTRIAL BROADCASTING ARE NEAR COMPLETION – IT SHOULD NOT GRANT A WAIVER OF THE DTV TUNER MANDATE AT THIS LATE STAGE IN THE PROCESS

Were the Commission to grant the requested waivers, it would send the absolutely wrong signal to the marketplace and consumers about the DTV transition. The efforts to transition American terrestrial broadcasts from analog to digital go back more than 20 years.¹¹ As part of this process in 2002, the Commission issued an order to require new televisions to be able to receive digital, free, over-the-air broadcasts.¹² That order implemented a phased-in time frame, requiring larger television receivers to have a DTV tuner before mid-size and then smaller television screens. This phased-in schedule was designed to assist manufacturers with compliance and to realize economies of scale so that the DTV tuner requirement would be in effect long enough to bring down the price of DTV tuners for smaller televisions. The time-frame was later accelerated and expanded to cover all television receivers by March 1, 2007.¹³

¹⁰ *Second Report and Order*, at paragraph 3.

¹¹ Requirements for Digital Television Receiving Capability, *Second Report and Order*, ET Docket 05-24, 20 FCC Rcd 18067 (2006) at Appendix C Paragraph A.

¹² *Second Report and Order and Second Memorandum Opinion and Order*, MM docket 00-39, 17 FCC Rcd 15978 (2002).

¹³ *Second Report and Order*, at 25 (. . . we continue to believe that it is essential that DTV reception capability be provided to consumers in new TV receivers as rapidly as possible in
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Philips supported the Commission's determination to accelerate the deadline by four months from July 1, 2007 to March 1, 2007, and specifically advocated extending the requirement to all television receivers, regardless of size.¹⁴ Philips believed then, and believes now, that the DTV transition must be swift, uniform, and complete. The grant of the requested waivers would undermine that objective advocated by the Commission and the Congress.¹⁵

IV. GRANTING KOHLER'S AND ELECTRIC MIRROR'S APPLICATION WOULD FRUSTRATE THE COMMISSION'S GOALS FOR A SMOOTH ANALOG TO DIGITAL TRANSITION

Both Kohler and Electric Mirror argue that their televisions, which are integrated into vanity mirrors, can be exempted from the Commission's DTV tuner requirement, without compromising the transition goals of the Commission¹⁶ both because their products are not the primary television receiver used by their consumers¹⁷ and because their units do not typically receive over-the-air signals¹⁸. Both of these statements are contrary to the Commission's PDI order¹⁹ and should not sway OET to grant a waiver in this circumstance.

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order to promote an expeditious completion of the transition from analog to digital broadcasting service).

¹⁴ See Comments of Philips Electronics North America Corporation at 9-10, Docket 05-24, (July 27, 2005).

¹⁵ *Second Report and Order* at paragraph 25 (. . . applying this [DTV tuner] requirement to receivers with screens smaller than 13" will most effectively ensure that products in these categories are equipped to receive digital television signals *as quickly as possible* consistent with manufacturing and product distribution capabilities of manufactures and retailers).

¹⁶ Electric Mirror Petition at 1.

¹⁷ Electric Mirror Petition at 3; Kohler Petition.

¹⁸ Electric Mirror Petition at 3; Kohler Petition.

¹⁹ *PDI Order* at paragraph 6 and 7.

A. IT IS IRRELEVANT WHETHER A TELEVISION IS THE PRIMARY VIEWING SYSTEM

Electric Mirror's and Kohler's attempt to find a safe harbor in their erroneous assumption that consumers would be content to only have their primary television receivers required to meet the DTV tuner requirement runs contrary to the Commission's explicit requirement that television receivers with screen sizes less than 13 inches, while almost certainly not a viewer's primary television set,²⁰ must comply with the March 1, 2007 deadline.²¹ By applying the DTV tuner requirement to all television receivers regardless of size, the Commission implicitly, if not explicitly, rejected the distinction between primary and secondary viewing units urged by Electric Mirror and Kohler. Allowing Electric Mirror's and Kohler's waiver application, based in part on distinguishing between primary and secondary viewing units, would undermine the Commission's rules and frustrate its stated goals.

Likewise, the fact that Electric Mirror's televisions are sold almost exclusively to hotels²² and not directly to consumers should have no effect on the Commission's decision. Since the goal of the DTV tuner requirement is to maximize the number of DTV tuners in the market²³ in order to ensure that the viewing public is able to transition to digital reception after analog broadcasts ceases, it is irrelevant whether the television in question is embedded in a mirror in an individual's bathroom²⁴ or embedded in a mirror in a hotel bathroom.²⁵

²⁰ *Second Report and Order* paragraph 25.

²¹ *Id* at paragraph 25 (We therefore conclude that it would benefit consumers and the purposes of the broadcast television service and its transition to digital operation to require that receivers with screens less than 13' are able to receive digital signals on the same schedule as other TV receiver products).

²² Electric Mirror Petition at 4.

²³ Sumitomo order at paragraph 6, quoting *Second Report and Order* at paragraph 6.

²⁴ *See* Kohler Petition.

B. TELEVISION RECEIVERS ABLE TO RECEIVE OVER-THE-AIR BROADCASTS ARE REQUIRED TO MEET THE DTV TUNER REQUIREMENT – EVEN IF THE UNITS DO NOT TYPICALLY ACCESS BROADCAST SIGNALS.

Both Kohler and Electric Mirror also attempt to justify their waiver applications on the premise that since most purchasers of their products do not rely on over-the-air reception, but rather utilize transmission from a central unit, the public would not be adversely affected by a waiver.²⁶ However, the televisions apparently are able to receive over-the-air broadcasts,²⁷ and therefore the waiver applications should be held to the same standard announced by the Commission in the *PDI order*. In that instance the Commission clearly stated that,

While the PDI viewing units are different than most TV receivers with screens smaller than 13” in that they are designed to receive service from a separate antenna connected through a cable rather than an attached antenna, that does not alter the fact that the PDI units would not be able to receive off-the-air TV signals when analog TV service ends unless they include a DTV tuner.²⁸

By rejecting PDI’s broad argument that the DTV tuner requirement does not apply to their systems, OET further reinforced its policy to have television receivers able to receive over-the-air broadcasts be subject to the DTV tuner mandate, regardless of whether or not the end user utilizes this option for receiving broadcast signals. Since both Kohler’s and Electric Mirror’s products are physically able to receive over-the-air broadcasts, and the consumers who purchase these products today may not be able to utilize the television component of the mirror after the

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²⁵ Electric Mirror Petition at 2.

²⁶ Electric Mirror Petition at 3; Kohler Petition.

²⁷ Electric Mirror Petition at 5 (. . . [Electric Mirror’s] viewing units virtually always receive their programming from a central unit...); Kohler Petition (It is very unlikely that these exclusive and expensive products would be used with an off-air antenna.).

²⁸ See *PDI order* at paragraph 7.

digital transition in February 17, 2009, OET should reject both Kohler's and Electric Mirror's application based on claims that the units generally receive a signal from a central system or cable connection.

C. NEITHER KOHLER NOR ELECTRIC MIRROR'S PRODUCTS SHARE THE UNIQUE SAFETY REQUIREMENTS OF PDI'S AND SUMITOMO'S PRODUCTS THAT RECEIVED WAIVER.

In granting a limited one-year waiver to both PDI and Sumitomo's television receivers, the Commission and, subsequently, OET, justified granting a waiver solely on the unique safety requirements imposed on PDI's and Sumitomo's television units.²⁹ Both of those products are designed for use in health care facilities and are required to be powered through the coaxial cable in order to lessen the risk of electrical shock to patients from current that might travel along a dialysis catheter or IV line.³⁰ Neither Electric Mirror nor Kohler's products are required to adhere to similar safety requirements.

OET should also not be persuaded by either Electric Mirror's or Kohler's attempt to analogize their waiver request with the Commission's grant of a limited waiver to PDI and Sumitomo in order to justify approval of their petition based on serving the public interest. Petitioners have misread the Commission's justification for a narrow waiver based on unique safety requirements in the PDI and Sumitomo requests and erroneously seek a broad waiver for niche market manufacturers based on difficulty in securing necessary components.³¹ It should be noted that the Commission and OET, respectively, also explicitly refused to grant a waiver to

²⁹ Requirements for Digital Television Receiving Capability, *Order* ET Docket No. 05-24, 21 FCC Rcd 9478 (Rel. August 17, 2006) at paragraph 10 ("PDI order").

³⁰ *Id.* at paragraph 4.

³¹ Electric Mirror petition at p. 4.

PDI and Sumitomo based on the size of these units,³² and OET should not deviate from this policy for the petitioners in this matter.

Both Electric Mirror and Kohler should have been well aware that the Commission had decided to require television receivers with screen sizes of less than 13 inches to meet the DTV tuner requirement by March 1, 2007 since that order was issued in November, 2005. Since neither company had been producing televisions for a long period of time³³ it is only fair to assume that any new entrant to a market would have performed due diligence on applicable Federal rules. As such, a decision by OET to accept either of these last minute waiver applications would only encourage other manufacturers to seek similar waivers from the DTV requirement, the effect of which could slow down the DTV transition.

³² Petition of Sumitomo Canada Limited for Temporary Waiver of Section 15.117 of the Commission's Rules, *Order*, ET Docket No. 06-198, 22 FCC Rcd 122 (Rel. Jan. 5, 2007) ("Sumitomo order"; *PDI Order* at paragraph 7.

³³ Electric Mirror Petition at p.2; *see* Kohler Petition.

V. CONCLUSION

Since neither company met their burden of proof to justify a waiver under the Commission's standard, OET should reject both Electric Mirror and Kohler's close-to-the-deadline petition for waiver. Now is the wrong time to send a signal, any signal, to the marketplace that might lead one to believe the Commission is not fully committed to the DTV transition and the subsequent DTV conversion. By denying these waiver requests, OET would signal the Commission's strong commitment to a thorough and complete DTV transition, an approach that Philips supports.

Respectfully submitted,

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